

EXHIBIT 9

From: Jonathan Schwartz <jis@sun.com>
Sent: Fri Feb 09 2007 21:39:10 PST
To: Simon Phipps <simon.phipps@sun.com>
CC:
Subject: Re: Request for assistance with Apache's Java SE TCK license
Attachments:

Importance: Normal
Priority: Normal
Sensitivity: None

so ... what's the issue?

On Feb 9, 2007, at 9:40 PM, Simon Phipps wrote:

> /Much/ appreciated. Thank-you.
>
> On Feb 9, 2007, at 21:29, Jonathan Schwartz wrote:
>
>> Sorry for being incommunicado - thanks for your note.
>>
>> Just wanted to let you know I got your note, Rich and I are aware
>> of the issues, and will be sure we get a response to you asap.
>>
>> Again, apologies for the delay...
>>
>> Jonathan
>>
>> On Feb 4, 2007, at 3:33 PM, Geir Magnusson Jr. wrote:
>>
>>> Dear Jonathan,
>>>
>>> My name is Geir Magnusson Jr, and I'm the officer of the Apache
>>> Software Foundation charged with matters relating to the JCP. I
>>> am also the PMC Chair of the Apache Harmony project. We've
>>> exchanged mail in the past related to your blog (we argued about
>>> razors and handles) and we actually met once at an OSCON.
>>>
>>> Over the past 5+ months, the Apache Software Foundation has been
>>> attempting to secure an acceptable license from Sun for the TCK
>>> for Java SE, needed by the Apache Harmony project. By
>>> "acceptable", I mean a TCK license that does not attempt to limit
>>> the terms under which we distribute our software, and
>>> additionally, conforms to the terms of the JSPA and the public
>>> promises of the so-called "Apache Compromise", in which Sun
>>> pledged that Sun-led JSRs would be implementable in open source.
>>> Our negotiations started out well last August, but became
>>> difficult in October, and currently we are at an impasse.
>>>
>>> I believe you are our last chance for resolving this matter
>>> privately and quickly. Critics predicted that Sun would use
>>> control of the TCK as a means to harm and impede the Harmony

>>> project, a notion that has become exceedingly hard to credibly
 >>> refute. Besides holding back the Harmony project, this issue
 >>> poses serious risk to the credibility of the JCP as a standards
 >>> organization, and the reputation of Java as an open ecosystem.
 >>> Further, it also puts at risk the long-standing positive
 >>> relationship between the Sun and the ASF (and I'd speculate the
 >>> broader open source community), something I believe is valuable
 >>> and should be preserved.

>>>
 >>> The core problem is Sun is attempting to place limitations on the
 >>> field of use of tested, compatible implementations of Java SE
 >>> produced by the Harmony project. The reason given is that free
 >>> availability of such software from the ASF would negatively
 >>> impact Sun's embedded software business.

>>>
 >>> We believe that such limitations are a violation of the
 >>> fundamental philosophy of the JCP as well as the governance
 >>> document, the JSPA, to which Sun is a signatory, where all
 >>> necessary IP must be licensed royalty-free to any compatible
 >>> implementation of a specification. They are also contrary to
 >>> Sun's public promise that any Sun-led specification would be
 >>> fully implementable and distributable in open source. It
 >>> shouldn't have to be mentioned that "fully implementable"
 >>> includes passing the TCK, as required by the specification
 >>> license. Just as important to us, limitations on field of use is
 >>> contrary to the basic principles inherent in open source
 >>> licensing, and therefore these limitations would prevent
 >>> distribution under an open source license.

>>>
 >>> Our objections to the offered license are clear and valid. Even
 >>> if it could be argued that there is room for debate about the
 >>> specific meaning of phrases in the JSPA, the spec license, the
 >>> TCK license, or the Apache Compromise, I think we both understand
 >>> that the the situation we are facing is grossly in conflict with
 >>> the basic IP philosophy of the JCP, the concept of Java as an
 >>> open standards-based ecosystem, and Sun's public promises. The
 >>> JCP was clearly designed to prevent any single actor from being
 >>> able to exhibit this sort of market control. Additionally, it's
 >>> contrary to the spirit of open source, the respect of which is a
 >>> key element in Sun's business strategy.

>>>
 >>> Through Apache Harmony, the ASF entered into the specification
 >>> license in good faith, with the expectation that Sun as the spec
 >>> lead would reciprocate. Our intention has always been to produce
 >>> a certified compatible implementation of Java SE distributed
 >>> under the Apache License. To do so, we need the TCK. Please
 >>> help us rectify this situation immediately.

>>>
 >>> I look forward to your response.

>>>
 >>> geir

>>>
 >>> Geir Magnusson Jr.
 >>> VP, Java Community Process

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